

**THIS DOCUMENT AND THE EXHIBITS CONSTITUTE
CONFIDENTIAL BUSINESS INFORMATION**

June 4, 2019

By FedEx and Electronic Mail

Mr. Joseph E. Cole
Associate General Counsel
Office of the General Counsel
U.S. Environmental Protection Agency
William Jefferson Clinton Building (North)
Mail Code 2310A
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

**Re: AHETF's Petition to Cancel Jiangsu Fengdeng Crop Science Co., Ltd.'s
Registrations for Failure to Comply with the Terms of a FIFRA Data
Compensation Agreement**

Dear Mr. Cole:

The Agricultural Handler Exposure Task Force, L.L.C. ("AHETF") hereby petitions EPA to cancel all registrations held by Jiangsu Fengdeng Crop Science Co., Ltd. ("Jiangsu") that rely on AHETF's data, due to Jiangsu's failure to comply with the terms of an agreement concerning data compensation, as provided by 7 U.S.C. § 136a(c)(1)(F)(iii)¹ and 40 C.F.R. § 152.99. The Jiangsu registrations subject to cancellation include **Propiconazole Tech 95% (EPA Reg. No. 90736-1)** and **Tebuconazole Tech (EPA Reg. No. 90736-2)**. By filing this Petition, AHETF does not waive and expressly reserves its rights to seek all further relief available to it under FIFRA and other applicable law.

I. BACKGROUND

AHETF is an industry-wide group of 27 pesticide companies, including both basic manufacturers and follow-on companies. AHETF was formed to generate data required by the United States Environmental Protection Agency ("EPA") to measure the amount of pesticide exposure experienced by agricultural workers in doing their jobs. *See* Exhibit 1 ¶ 2. Task forces

¹ Section 3(c)(1)(F)(iii) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended.

are common in the industry, and encouraged by EPA, to allow pesticide registrants to spread the costs and risks of generating data relevant to multiple pesticides. EPA has confirmed that AHETF's is the "most reliable" data addressing these handler exposure issues and EPA routinely relies on AHETF's data in making registration decisions.²

Jiangsu applied for and obtained EPA registrations to allow it to distribute and sell pesticide products with agricultural uses. Rather than generating its own handler exposure data, Jiangsu chose to cite and rely on the data previously submitted by AHETF. As required by FIFRA, Jiangsu provided AHETF with written offers to pay compensation for its reliance on AHETF's data, which authorized EPA to rely on AHETF data in support of Jiangsu's registration applications.

Specifically, Jiangsu provided AHETF a letter dated March 4, 2014, offering to pay compensation under FIFRA for Jiangsu's reliance on AHETF's data to support Jiangsu's application for EPA registration of its Propiconazole Tech 95% product. Exhibit 3. Jiangsu again cited and offered to pay for AHETF's data to support Jiangsu's application for EPA registration of its Tebuconazole Tech product, furnishing AHETF with a second offer-to-pay letter dated July 29, 2015. Exhibit 4.

Ex. 4 CBI

² See, e.g., <https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/occupational-pesticide-handler-exposure-data#ahetf>

II. EPA MUST CANCEL JIANGSU'S REGISTRATIONS

The only question to be resolved by EPA here is whether or not Jiangsu complied with the terms of the parties' Agreement concerning data compensation. As FIFRA makes clear:

Notwithstanding any other provision of this Act, if the Administrator determines that an applicant has . . . failed to comply with the terms of an agreement . . . concerning [data] compensation under this subparagraph [§ 3(c)(1)(F)(iii)]. . . , the Administrator shall deny the application or cancel the registration of the pesticide in support of which the data were used without further hearing.

FIFRA § 3(c)(1)(F)(iii) (emphases added), 7 U.S.C. § 136a(c)(1)(F)(iii). EPA's implementing regulations allow a petition to cancel to be filed on this ground "at any time that the circumstances warrant," and require only that the petitioner submit a copy of the agreement and describe how the applicant failed to comply with it. 40 C.F.R. § 152.99(a)(1)(ii), (b)(1). As noted above, a copy of the Parties' Agreement is provided as Exhibit 2. Pursuant to EPA's rules, Jiangsu has 60 days to respond, and EPA must cancel Jiangsu's registrations promptly thereafter. 40 C.F.R. § 152.99(b)(2).

The undisputed facts are clear that Jiangsu failed to comply with the terms of an agreement concerning data compensation.

Ex. 4 CBI

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Jiangsu had ample opportunity to meet its obligations, and indisputably failed to do so. Accordingly, the statute requires that EPA "shall . . . cancel the registration[s] of the pesticide[s] in support of which the data were used without further hearing." FIFRA § 3(c)(1)(F)(iii), 7 U.S.C. § 136a(c)(1)(F)(iii). Few, if any, other provisions of FIFRA provide a mandate this clear and unequivocal.

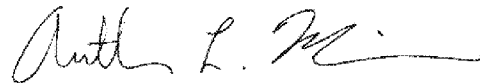
EPA must promptly grant this Petition and cancel Jiangsu's registrations, both because that action is required by statute, and because to do otherwise would fatally undermine the

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statutory scheme addressing data compensation. The data compensation scheme established by FIFRA can function only if parties to settlement agreements perform their payment obligations. EPA must send a decisive and clear message to the regulated community that data compensation settlement agreements will be enforced, and that registrants cannot simply ignore their clear legal obligation to pay the amount of data compensation they agreed to pay, when they agreed to pay it. Under the indisputable facts here, EPA is statutorily required to cancel Jiangsu's registrations.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Anth L. Michaels". The signature is fluid and cursive, with a long horizontal stroke at the end.

Anthony L. Michaels
Counsel to AHETF

Enclosures: Exhibits 1-7.

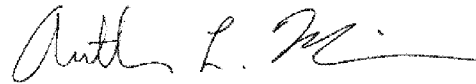
cc: Robert Perlis, Esq., EPA Office of General Counsel (by e-mail)
David Johnson, AHETF Task Force Manager (by e-mail)
Dave Barnekow, AHETF Administrative Committee Chair (by e-mail)
Zero Tan, Manager, Regulatory Affairs, Jiangsu Fengdeng Crop Science Co., Ltd.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of June, 2019, true and correct copies of the foregoing AHETF's Petition to Cancel Jiangsu Fengdeng Crop Science Co., Ltd.'s Registrations for Failure to Comply with the Terms of a FIFRA Data Compensation Agreement, with Exhibits, was served upon the following by Federal Express and e-mail:

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Anthony L. Michaels

Index of Exhibits
Submitted in Support of AHETF's Petition to Cancel Jiangsu's Registrations

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| Exhibit 1 | Declaration of David R. Johnson |
| Exhibit 2 | Data Compensation Settlement Agreement Between the Agricultural Handler Exposure Task Force, L.L.C. and Jiangsu Fengdeng Crop Science Co., Ltd. ("Agreement") |
| Exhibit 3 | Jiangsu Offer to Pay Letter to AHETF for Propiconazole Tech 95%, dated March 4, 2014 |
| Exhibit 4 | Jiangsu Offer to Pay Letter to AHETF for Tebuconazole Tech, dated July 29, 2015 |
| Exhibit 5 | AHETF Request for Arbitration dated August 19, 2016 |
| Exhibit 6 | Default Notice Letter from AHETF to Jiangsu, dated December 14, 2018 |
| Exhibit 7 | Letter from AHETF to Jiangsu, dated March 1, 2019 |